

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Docket No.: 08-cv-827

DAVID E. WHITE COMPANY, INC., a
corporation doing business as TRINITY FRUIT
SALES CO.,

ANSWER

Plaintiff,

-against-

AAAP USA CORPORATION, a corporation

Defendant,

-----X

Defendant AAAP USA Corporation, by its attorneys, Schrier, Fiscella & Sussman, LLC, as and for its answer to the Complaint, respectfully alleges as follows:

1. Admits to the allegations set forth in paragraphs "1", "2", "3", "5" and "6".
2. Denies knowledge or information as to paragraph "4".

AS AND FOR THE FIRST CAUSE OF ACTION

3. Defendant repeats and reiterates each and every admission and denial set forth in paragraphs "1" through "6" of the complaint.
4. Denies the allegations contained in paragraphs "7", "9", "10", "11", "12", "13", "14", "15", "17", "18", "19", "20", "21", "22", "23", "24" and "25".
5. Denies knowledge or information as to paragraph "8", and "16".

AS AND FOR THE SECOND CAUSE OF ACTION

6. Defendant repeats and reiterates each and every admission and denial set forth in paragraphs "1" through "25" of the complaint.
7. Denies the allegations contained in paragraphs "26", "27", "28", "29" and "30".

AS AND FOR THE FIRST CAUSE OF ACTION

8. Defendant repeats and reiterates each and every admission and denial set forth in paragraphs "1" through "30" of the complaint.
9. Denies the allegations contained in paragraphs "31", "32", "33", "34", "35" and "36".

AS AND FOR THE FOURTH CAUSE OF ACTION

10. Defendant repeats and reiterates each and every admission and denial set forth in paragraphs "1" through "36" of the complaint.
11. Denies the allegations contained in paragraphs "37", "38", "39" and "40".

AS AND FOR THE FIFTH CAUSE OF ACTION

12. Defendant repeats and reiterates each and every admission and denial set forth in paragraphs "1" through "40" of the complaint.
13. Denies the allegations contained in paragraphs "41", "42", "43" and "44".

AS AND FOR THE SIXTH CAUSE OF ACTION

14. Defendant repeats and reiterates each and every admission and denial set forth in paragraphs "1" through "44" of the complaint.

15. Denies the allegations contained in paragraphs "45", "46", "47", "48", "49", "50", "51" and "52".

FIRST AFFIRMATIVE DEFENSE

16. Plaintiff fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

17. The claims alledged by plaintiff failed to set fourth facts that give rise to any claim against defendant AAAP USA Corporation.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

18. Plaintiff's claims and rights if any against defendant AAAP USA Corporation are barred in whole or in part by the doctrine of laches.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

19. Plaintiff's claims are barred by the doctrine of Estoppel.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

20. Plaintiff's claims are barred by the doctrine of waiver.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

21. Plaintiff's claims are barred by the doctrine of unclean hands.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

22. To the extent that plaintiff may have suffered any damages, its claims are barred for failure to litigate damages.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

23. Plaintiff's claims against AAAP USA Corporation are barred by the doctrines of setoff and recoupment, as announced claim to be owed to plaintiff by defendant, are exceeded in offset by amounts claimed to be owed to AAAP USA Corporation by plaintiff.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

24. Plaintiff's claims are barred by the doctrines of accord and satisfaction.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

25. Plaintiff's claims are barred by the fraudulent conduct of plaintiff as it relates to defendant.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

26. Plaintiff's claims are barred by a prior action pending.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

27. Plaintiff's purchased goods from defendant, AAAP USA Corporation.
28. Defendant delivered goods to Plaintiff.
29. Based upon the order placed by Plaintiff, Defendant shipped the goods from Europe to the United States, some of which Plaintiff refused to accept without inspection.
30. Plaintiff accepted 131 containers of citrus products.
31. Plaintiff failed to pay Defendant as per the agreement between the parties.
32. Defendant, in a separate and prior proceeding brought before the U.S. Department of Agriculture, PACA Branch, has asserted claims against Plaintiff sounding in breach of contract, quantum meruit, fraud, fraud in the inducement, and misrepresentation.
33. By reason of the foregoing, Plaintiff's claims herein are barred.

WHEREFORE, defendant, AAAP USA Corporation, respectfully demands judgment as follows:

1. Dismiss the complaint in its entirety.
2. Grant judgment in favor of defendant, AAAP USA Corporation, together with the costs and disbursements of this action, and such other and further relief

Dated: Garden City, New York
September 5, 2008

Yours, etc.,


By: RICHARD E. SCHRIER, ESQ.
SCHRIER, FISCELLA & SUSSMAN, LLC

Attorneys for Defendant
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TO: PETER RAGONE, ESQ (PR-6714)
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-and-

R. JASON READ (PR-6714)
California State Bar No. 117561
RR 0232
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4100 Newport Place Drive, Suite 700
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Attorneys for Plaintiff
DAVID E. WHITE COMPANY, INC., a
corporation doing business as TRINITY FRUIT
SALES CO.

AFFIDAVIT OF SERVICE

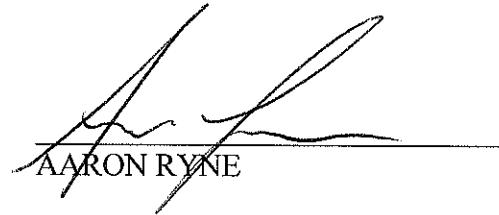
STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

AARON RYNE, being duly sworn, deposes and says:

Your deponent is not a party to the action; is over 18 years of age and resides at Nassau County, New York.

On July 16, 2008, your deponent served the within ANSWER by e-mail, addressed to each of the following person at the last known address set forth:

R. JASON READ (PR-6714)
California State Bar No. 117561
RR 0232
RYNN & JANOWSKY< LLP
4100 Newport Place Drive, Suite 700
Newport Beach, CA 92660
Tel: (949) 752-2911
Fax: (949) 752-0953
E-mail: jason@rjlaw.com



AARON RYNE

Sworn to before me this
5th day of September, 2008



Notary Public

RUBEN STEPANIAN
Notary Public, State of New York
No. 02ST6157126
Qualified in Queens County
Commission Expires 07/2010

Docket No. 08-cv-827
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

**DAVID E. WHITE COMPANY, INC., a
corporation doing business as TRINITY
FRUIT SALES CO.,**

Plaintiff,

-against-

**AAAP USA CORPORATION, a
corporation,**

Defendants.

ANSWER

**SCHRIER, FISCELLA & SUSSMAN, LLC
825 East Gate Boulevard, Suite 320
Garden City, New York 11530
(516) 739-8000
Fax: (516) 739-8004**

TO:

SERVICE OF A COPY OF THE WITHIN _____ is hereby admitted.

Dated: _____

PLEASE TAKE NOTICE

that the within is a (certified) true copy of a
NOTICE OF _____ entered in the office of the clerk of the
ENTRY within named Court on _____, 20 _____.

That an Order of which the within is a true copy will be
NOTICE OF presented for settlement to the Honorable
SETTLEMENT one of the judges of the within named Court on
_____, 20 ___, at ____ A.M.

SCHRIER, FISCELLA & SUSSMAN, LLC
Attorneys for Plaintiff